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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

COMPANY PETITION NO. 405 OF 2003

Andhra Bank ...Petitioners

Vs.

Silver Line Technologies Ltd. ...Respondents.

Mr. Shekhar Shetye i/by Mr. Pandya Gandhi & Co. for the petitioner.

None for the respondent.

CORAM : ANOOP V. MOHTA,J.

DATED : 20th September, 2007.

ORAL JUDGMENT:-

1. The petitioners bank have invoked the provisions of Section 433, 434 of the Companies Act as inspite of the receipt and service of statutory notice dated 17/10/2002 Exh. "C" and "D" the respondents company failed to make the payment of the amount due and payable to the tune of Rs.26,35,00,000/- (Rupees twenty six crore thirty five lacs only).

2. The petitioners are a body corporate constituted under provisions of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 having its office at Andhra Bank Building, Sultan Bazar, Hydrabad 500 195 and the Company above named i.e. Silver Line Technologies Ltd., is a company duly incorporated and

registered under the companies Act. I of 1956 having its registered office at 1405 Maker Chamber, V. Nariman Point, Mumbai 400 021 (hereinafter referred to as the said Company).

3. The main object for which the company is incorporated are inter alia to design, develop, export, import or deal in computers, including computer based equipments and systems related to software and computer programmers and accessories to design, develop and render technical know how, to run Education centre and coaching classes and also to assist in electronics, marketing, systems and management relating to computers, computer machinery and computer science to produce, process, dye, print and otherwise deal in textiles, cotton, etc.

4. As on 15th November, 2002 the company is indebted to the petitioners in the sum of Rs.27,66,53,538.95.

5. In on about 17th June, 2000, one Intelli Group Asia Pvt. Ltd. (hereinafter referred to as the said "Intelli;) availed of certain credit facilities for its business from the petitioners. The said Intelli was transferred with all its assets and liabilities to

one Seranova India Pvt. Ltd.

6. By the Deed of Guarantee dated September 17, 2001 duly executed at Hyderabad, by the said company in favour of the petitioners for a sum of Rs.33.26 crores, the company in consideration of the petitioners giving credit for accommodation or granting facilities to the said company or their subsidiary company by making, opening, continuing a loan/overdraft/cash credit account or by discounting/purchasing or negotiating bills with or without security and/or/in consideration of the Bank opening and giving letters of credit and/or trust receipt facilities in favour of the said company provided that the liability of the company shall not exceed in the whole, a sum of Rs.33,26,00,000/- a part from and in addition to all interests, banking, law and other costs, charges and expenses.

7. The company also issued another Guarantee on 19th June, 2002 in favour of the petitioners for existing liabilities of the said company for Rs.26,54,34,000/-. As on September 30,2002 an aggregate sum of Rs.27,18,18,427.95 became due and payable by the said company to the petitioners together with further

interest thereon.

8. The petitioners by their letter dated 11th September, 2002 called upon the said company to regularise its account with the petitioners. Once again the petitioners by their Advocates letter dated October 17,2002 addressed to the said company and to the said seranova inter-alia called upon and demanded from the said company and/or the said seranova the entire outstanding dues in respect of the loan account of the said seranova, but the said company and the said seranova failed and neglected to pay to the petitioners the said sum of Rs.27,18,18,427.95 or any part thereof.

9. The petitioners say and submit that the company is and/or is deemed unable to pay its debts, therefore, it is just necessary equitable, proper and in the interest of justice and in the interest of its creditors that the said company be wound up and the official liquidator or some other fit and proper person be appointed as the liquidator of the said company and the petitioners pray accordingly.

10. The respondent company by their affidavit/reply

to the petition dated 16th July, 2004 resisted the admission of the petition. However, by order dated 16th December, 2004 rejecting the said defence raised i.e. as the goods which are lying as security and therefore, there is no crystallized debt with the company. The petition should be, therefore, dismissed. Firstly the claim amount of Rs.26,35,00,000/- is taken note of and even if the security by an hypothecated goods are taken into consideration, the balance claim is sufficient to consider the prayer clauses as made in the petition. The non initiating of the proceedings against the principal debtor is no ground to dismiss the present company petition for winding up, pursuance to the deed of guarantee for the aforesaid appeal. The adjudication even if pending and or not yet finalized, but in the facts and circumstances of the case, where admittedly inspite of raising the same defence, this Court on 16th December, 2004 admitted the petition.

11. After admission of the petition and after completing all the formalities required under the law, the petition is now listed for final hearing. The matter has been on board and adjourned from time to time as none appeared for the respondent, today again

none appeared for the respondents. Respondent as already noted has waived the service as recorded in the order dated 16th December, 2004.

12. In view of **Skol Breweries Ltd. Vs. Sanman Distributors Pvt. Ltd., AIR 1999 BOM. 249** after considering the Rule 27, 28 and 31 of Companies (Court) Rules (1959), this Court has observed specifically in para 9 as under:-

> "9. I have also no hesitation to hold that the procedure in the manner laid down under Rules 27 and 28 has to be mandatorily followed and complied with on admission of winding up petition save and except where at the time of admission of winding up petition, the company is represented by its Advocate and the notice is waived or is dispensed with by the Court, otherwise notice to the company has to be issued and served in winding up petition in accordance with the provisions contained in the Company Court Rules. Failure to comply with the procedure as required under Rules 27 and 28 unless ordered otherwise by the Court may entail in dismissal of the company petition under Rule 31 and that also indicates the mandatory nature of Rules 27 and 28. The procedure contemplated by Rules 27, 28 and 29 cannot be permitted to be substituted by self-invented procedure of sending intimation about the admission of winding up petition to the company by the petitioning creditor. Such exercise of intimation is no service in the eye of law on face of mandatory provisions of Rules 27 and 28."

13. Therefore, at this stage, having once accepted and waives the notice, the requirement of Rule 28 is not necessary. In this background the facts and averments made in the petition remain uncontroverted. Even assume for a moment some defence was raised at the time of the petition but at this stage of time, respondent company ought to have submitted their defence as well as admitted the present petition. The Court has rejected all those defence. The order dated 16th December, 2004 also remains intact. In this background, in absence of specific positive steps or any additional affidavit or fresh affidavit, I am of the view that as the averments made remained uncontroverted including the fact and demand of Rs.26,35,00,000/-.

14. It appears that, ultimately the dispute as raised was not bonafide the claim as such is also within the limitation.

15. Resultantly, the petition is allowed in terms of prayer clauses (a),(b) and (f). However, this order will come into force after two months. Meanwhile, the respondent company is at liberty to settled the matter or to make the payment as demanded.

(ANOOP V. MOHTA, J.)